

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

DESERT PALACE, INC.,

Plaintiff,

v.

ANTIFRONES NACIONALES - MEXICO,

Defendant.

Case No. 2:14-CV-00367-APG-PAL

ORDER

Before the Court is defendant Antifrones Nacionales - Mexico's Motion to Dismiss. (Doc. #4.) Defendant moves to dismiss plaintiff's third claim for relief for unjust enrichment/quantum meruit. Defendant contends plaintiff cannot assert a quasi-contract claim because plaintiff alleges a valid and enforceable contract existed between the parties. Plaintiff did not respond to defendant's Motion.

The failure to respond to defendant's Motion constitutes consent to the Court granting the Motion. LR 7-2(d). Nevertheless, I have reviewed the Motion on the merits. Plaintiff's Complaint alleges that plaintiff entered into a written agreement with Defendant. (Notice of Removal (Doc. #1), Ex. A at 2-3.) A claim based on a theory of unjust enrichment is not available when there is an express, written contract. *Leasepartners Corp. v. Robert L. Brooks Trust Dated Nov. 12, 1975*, 942 P.2d 182, 187

1 (Nev. 1997). Plaintiff makes no argument it was pleading claim three in the alternative to
2 its breach of contract claim. *See* Fed. R. Civ. P. 8(e)(2).

3 IT IS THEREFORE ORDERED that defendant Antifrones Nacionales - Mexico's
4 Motion to Dismiss (Doc. #4) is hereby GRANTED as to count three of Plaintiff's
5 Complaint.

6 DATED this 28th day of July, 2014.

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8 ANDREW P. GORDON
9 UNITED STATES DISTRICT JUDGE
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